

REMARKS

Claims 1-20 are pending in the current application. Claims 1-20 currently stand rejected. Reconsideration and withdrawal of the rejections to claims 1-20 are respectfully requested.

Interview Summary

Applicants thank the Examiner for her time and consideration during the interview of November 18, 2008, conducted via telephone and email. During the interview, the parties discussed a potential amendment to the first independent claim. The Examiner indicated that the proposed amendment appeared to overcome the present art rejections, but that further search and consideration would be required. Applicants have amended the independent claims in accordance with the proposed amendments considered during the Examiner interview.

Claim Rejections – 35 U.S.C. § 102

Claims 1, 2, 9, and 20 stand rejected under 35 U.S.C. § 102(e) as being anticipated by US Pat Pub 2002/0181436 to Mueckenheim et al. ("Mueckenheim"). Applicants respectfully traverse the rejection for the reasons below.

Initially, Applicants note that each of claims 1, 9, and 20 has been amended to recite that "the physical structure of the control channel and the data arrangement in the **control** channel [is] selected based on a user

transmission mode.” Where Mueckenheim discloses channel formatting, it is limited to **transport** channels including user traffic, which are formatted based on user QoS requirements. See Mueckenheim, ¶¶ [00009]-[0010], [0075]-[0091]. Mueckenheim is silent with regard to selecting or formatting a universal control channel based on the transport format of the traffic channels. Thus, Mueckenheim lacks the selection of the single control channel recited in claims 1, 9, and 20 as amended.

Withdrawal of the rejections to claims 1-20 under 35 U.S.C. §§ 102(e) and 103(a) is respectfully requested.

Claim Rejections – 35 U.S.C. § 103

Claims 3-8 and 10-19 stand rejected under 35 U.S.C. § 103(a) as being obvious over Mueckenheim in view of 2002/0093953 to Naim et al. (“Naim”). Applicants respectfully traverse the rejection for the reasons below.

Applicants respectfully submit that, at the time of invention of the present application 10/647,339, the Mueckenheim reference and the present application were subject to an obligation of assignment to the same person, Lucent Technologies.

Thus, Mueckenheim, which otherwise qualifies as prior art under only § 102(e), is an invalid reference for use in a rejection under § 103(a), due to the provisions of § 103(c). Because Naim alone fails to teach or suggest each and

every feature of claims 3-8 and 10-19, even without regard to the amendments made to claims from which they depend, Naim cannot anticipate or render obvious claims 3-8 and 10-19. Withdrawal of the rejection to claims 3-8 and 10-19 under 35 U.S.C. § 103(a) is respectfully requested.

Entry of Amendment Requested

Entry of the above amendments to the claims following the closing of prosecution is respectfully requested. Applicants submit that the primary reference to Mueckenheim is disqualified as prior art by above statements, and thus the Examiner must conduct an additional search and consideration for claims 3-8 and 10-19 rejected under § 103(a), for the subject matter previously applied from Mueckenheim. Because the Examiner is already conducting a further search over Mueckenheim, entry of the amendments to claims 1, 9, and 20, which are rejected only over Mueckenheim, does not require further search and consideration over what the Examiner must already conduct if the claim amendments were not entered. Applicants respectfully request entry of the above claim amendments under 37 C.F.R. § 1.116.

CONCLUSION

Accordingly, in view of the above remarks, reconsideration of the objections and rejections and allowance of each of claims 1-20 in connection with the present application are earnestly solicited.

Pursuant to 37 C.F.R. §§ 1.17 and 1.136(a), Applicant(s) hereby petition(s) for a one (1) month extension of time for filing a reply to the outstanding Office Action and submit the required \$130.00 extension fee herewith.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Gary D. Yacura at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKY, & PIERCE, P.L.C.

By



Ryan Alley, Reg. No. 60,977.

Gary D. Yacura, Reg. No. 35,416

P.O. Box 8910
Reston, Virginia 20195
(703) 668-8000

GDY/REA: tlt